IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

and

THE HON'BLE MR JUSTICE P.SWAROOP REDDY

WRIT PETITION NO.10190 of 2004

Between:

LT COL (Retired) N.K. Yadav, S/o Sri H.N. Yadav,
R/o 506, Mansarovar Heights, Hashmatpet, Secundefrabad (AP).

...PETITIONER

AND

1. The State Of Andhra Pradesh represented by the Superintendent, Central Prison, Chanchalguda, Hyderabad (AP).
2. The Editor, Times of India, Hyderabad Edition, Begumpet, Hyderabad (AP).
3. The Secretary, Medical & Health, Government of A.P., Hyderabad.

(R2 name deleted as per Court order dated 29.06.2004 in W.P.No.10190 of 2004)

(R3 is impleaded as per Court order dated 29.06.2004 in W.P.No.10190 of 2004)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a direction , orders or a Writ, more appropriately one in the nature of a Writ of Mandamus directing/declaring the action of the respondents herein "Declare the action of the 1st Respondent of receiving and continued retention/detention of under-trial/ convicted prisoners in unsound mental health condition inside the Central Prison, Chanchalguda, Hyderabad (AP) as well as other Prisons in the State of AP along with healthy prisoners as being violative of Chapter XXV (Sections 328 to 339 of the Code of Criminal Procedure, 1973 as also Sections 23 to 25 in Part III of the Mental Health Act, 1987" .

Counsel for the Petitioner: MR.CAPT.K.M.SAXENA

Counsel for the Respondents: GP FOR HOME

The Court made the following:

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

And

THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

WRIT PETITION NO.10190 OF 2004

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

Heard Sri Captain K.M.Saxena, the learned counsel appearing on behalf of thpe petitioner and the learned Government Pleader for Home appearing on behalf of the respondents.

In this Writ Petition filed under Article 226 of the Constitution of India terming it as Public Interest Litigation, the petitioner, who is a retired Army Officer and presently working as an Associate Professor of Engineering, seeks a Writ of Mandamus to declare the action of the first respondent in receiving and continuing retention/detention of

under trial/convicted prisoners of unsound mental health condition inside the Central Prison, Chanchalguda, Hyderabad as well as other prisoners in the State of Andhra Pradesh along with the healthy prisoners as being violative of Chapter XXV (Sections 328 to 339 of the Code of Criminal Procedure, 1973) and Sections 23 to 25 in Part III of the Mental Health Act, 1987.

Initially in this Writ Petition, the petitioner had shown the Editor of Times of India, Hyderabad Edition as second respondent. However, at the inception, as per the orders of this Court dated 29.06.2004 the name of the second respondent was

deleted and the third respondent was impleaded by this Court's order of even date.

The main grievance of the petitioner as sworn to in the affidavit filed in support of the Writ Petition squarely rests on the news item appeared in the 'Sunday Times of India' daily news paper on 20.06.2004 with regard to the mentally ill undertrial prisoners lodged and languishing in the Central Prison, Chanchalguda, Hyderabad. As per the said news item, the prisoners, who are of unsound mind and serious mental disorder, are being continued to be kept in the prisons along with the healthy prisoners without proper medical checkup. Hence, the Writ Petition.

It is to be noticed that except a bare reference of the aforesaid press note, no other specific allegation or averment is made nor there is any particular event in respect of such prisoners who are mentally unsound or ill and who have not been given proper treatment.

The principal contention, as submitted on behalf of the petitioner, rests mainly on the directions given by the Supreme Court in ***D.K.Basu v. State of W.B.***.

Initially a counter affidavit was filed, sworn to by
Sri A.Siva Prasad, who was working as Superintendent, Central Prison, Hyderabad on behalf of the first respondent denying the allegations and submitting the details in regard to the various facilities provided to the inmates with necessary paramedical staff. He further stated that the said prisoners are being provided with medical treatment and in the event of any such persons being found with mental illness, on the advice of the Institute of Mental Health authorities and after obtaining appropriate orders from the Courts, they are being admitted in the Institute of Mental Health,

Hyderabad for treatment.

In the later counter affidavit sworn to on 14.09.2004 by the Director General & Inspector General of Prisons & Director of Correctional Services, A.P., Hyderabad, there is reiteration of denial of the allegations made in the initial affidavit in regard to lack of proper treatment and necessary medical facilities. It was stated that a reference made by the petitioner in regard to the treatment given to a Cine Actor, cannot have any comparison to the others. Further, it was stated that the Paramedical staff are attending to all the prisoners. As and when any advice is given on the ground of mental illness, the prisoners are being referred to the Institute of Mental Health, Erragadda, Hyderabad. A reference was made to the G.O.Ms.No.82, Home (Prisons.C) Department, dated 01.04.2000 pointing out prohibition under the said G.O. in admitting the mentally ill persons to jails.

In the counter affidavit, it was pointed out that there are about 1,74,000 prisoners in the State who are being admitted every year including convicts, undertrial prisoners and the remand prisoners as inpatients etc. Out of the above, some were found to be mental. As such, necessary treatment was given to them and they were also released.

In the subsequent counter affidavit sworn to by the Principal Secretary to Government, Home Department, Government of A.P., on 09.02.2005, there is again reiteration of the allegations as alleged in the earlier counter affidavits. He further pointed out that the directions given in the aforesaid decision of ***D.K.Basu*** case are strictly being followed. Further this Court was informed in W.P.No.25856 of 1998 to the effect that all steps have been taken to ensure implementation of the directions

given in the said decision. Further, it is pointed out that in pursuance of the said directions and for proper implementation thereof, the Government has constituted a Committee, as per the orders in G.O.Ms.No.282 Home (HRC) Department, dated 17.09.2002 headed by Sri Justice Y.Bhaskar Rao, as Chairman and Sri Justice A.Hanumanthu, former Judge of this Court and Sri Justice N.Subba Raju, Chairman, Andhra Pradesh Administrative Tribunal as Members, which is monitoring and ensuring strict implementation of the directions given by the Supreme Court. It was also pointed out that even in reply to the enquiry made by the Registrar General of this Court as per the letter dated 10.12.2001, it was intimated by the DGP Office, Hyderabad vide D.O.Lr.No.3383/C1/1997, dated 19.12.2001 that the steps were already taken for proper implementation of the said directions. It was further pointed out that all the other departments concerned were also duly instructed for implementation of the said directions. Hence, it was stated that every effort is being made strictly to prevent any violation of human rights and Acts in accordance with Law and as per the aforementioned directions.

In an additional counter-affidavit sworn to on 22.12.2004 by the Principal Secretary to Government, Home Department, Government of A.P., further details were given as to the medical facilities provided including the treatment which is being offered at the Nizams Institute of Medical Sciences, Hyderabad and the mentally ill prisoners are being treated as inpatients at the Institute of Mental Health, Erragadda, Hyderabad and also at Visakhapatnam.

Heard the submissions made across the bar on both the sides.

During the course of arguments, the learned Government Pleader brought to the notice of this Court that the Government has already taken further steps by giving due instructions vide G.O.Ms.No.99, Health, Medical & Family Welfare (B2) Department, dated 02.04.2005, designating all the Government Doctors of Primary Health Centers etc., as Panel of Doctors for the purpose of strict compliance of the directions given by the Supreme Court in the aforesaid ***D.K.Basu***'s case and further directing all the Medical Officers to respond to the requisitions made by the local Police Officers/Station House Officers in the matter of subjecting arrestee to the medical examination duly conforming to Clause 8 of para 35 of the Judgment in ***D.K.Basu*** 's case. Further, the Station House Officers/ Police Officers are directed to follow the directions of the Supreme Court by producing the arrestee before the said Panel of Doctors to subject him for medical examination for every 48 hours during his detention. Consequently, necessary instructions were issued by the Government vide Memo No.3881/B2/2005-2, dated 19.03.2005 communicating the earlier directions given in this regard and also further directions given by the Director of Health, Andhra Pradesh, Hyderabad in R.C.No.Spl/E6/2005, dated 10.03.2005 instructing the Health Officers to prepare necessary panels for the purpose of medical examination for every 48 hours during the detention of the arrestee and the same was also reiterated by another letter of the Director of Health, Andhra Pradesh, Hyderabad in Rc.No.Spl/E6/2005, dated 20.02.2005 for the purpose of preparing a panel of Doctors and to take necessary action. It was further pointed out that consequently at every level, due instructions were given and steps are being taken for following the aforesaid directions of the Apex Court.

After considering the submissions made and on perusal of the material available on record, it is evident that though the Writ Petition is sought to be based on the news item dated 20.06.2004 in the 'Sunday Times of India' Hyderabad Edition daily news paper, no specific incident was pointed out in the affidavit filed in support of the Writ Petition. Even the said news paper, wherein the said news item had appeared, is not a party now, since the same was already deleted by the orders of this Court dated 29.06.2004. It is to be noticed that it is only out of the various counter affidavits filed on behalf of the respondents, the details and the particulars were shown with regard to the statistics of all the prisoners including such prisoners who are being found to be mentally ill and being provided with medical facilities and sending them to the appropriate Institutions. In spite of furnishing the said particulars, neither any attempt is made nor any specific incident has been pointed out on behalf of the petitioner by any mode to show that there is violation in regard to any particular prisoner or prisoners as such. Further, taking note of the fact that the Government has reiterated once again by specifically issuing the directions vide G.O.Ms.No.99, dated 02.04.2005 and also consequential references which have been made *inter se* authorities concerned, it is not necessary to go into any other details as such nor anything survives which requires to be considered. The directions of the Supreme Court as contained in Clause 8 of para 38 of the Judgment in ***D.K.Basu*** 's case specifically contemplate that:

> "The arrestee should be subjected to medical examination by a trained Doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State Union Territory concerned.

Director, Health Services should prepare such a panel for all tehsils and districts as well."

As evident from the instructions issued now and the steps taken, the panels have been duly constituted. Thus, recording the statements made on behalf of the respondents through various

counter-affidavits sworn to on their behalf, it would suffice to note that apt treatment would be provided for in respect of each such prisoner and consequently necessary steps would be taken in strict implementation of the directions of the Apex Court.

Accordingly, the Writ Petition is disposed of. No costs.

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(B. PRAKASH RAO, J)

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(P.SWAROOP REDDY, J)

8th June 2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copy To:

1. The Superintendent, State Of Andhra Pradesh, Central Prison, Chanchalguda, Hyderabad (AP).
2. The Secretary, Medical & Health, Government of A.P., Hyderabad.
3. Two CCs to G.P. for Home, High Court Buildings, Hyderabad (OUT).
4. Two CD copies.